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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. 1H-2008-079

AMANI SHAKHATE MANSELL
15665 Las Posas Drive
Moreno Valley, CA 92551

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California.

2. On or about February 1, 2008, the Respiratory Care Board of California (Board) received an application for a Respiratory Care Practitioner License from Amani Shakhate Mansell (Respondent). On or about January 22, 2008, Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on or about August 20, 2008.

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JURISDICTION

3. This Statement of Issues is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 3710 of the Code states, in pertinent part, that “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

5. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

6. Section 3750 of the Code states:

“The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

“...

“(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

“...”

7. Section 3750.5 of the Code states:

“In addition to any other grounds specified in this chapter, the board may deny, suspend, or revoke the license of any applicant or licenseholder who has done any of the following:

“(a) Obtained or possessed in violation of law, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administered to himself or herself, or furnished or administered to another, any controlled substance as defined in Division 10 (commencing with section 11000) of the Health and Safety Code, or any dangerous drug as defined in Article 7 (commencing with Section 4210) of Chapter 9 of this Code.

“...”

1 7. Section 3732 of the Code states:

2 “(a) The board shall investigate an applicant for a license, before a license
3 is issued, in order to determine whether or not the applicant has the qualifications
4 required by this chapter.

5 “(b) The board may deny an application, or may order the issuance
6 of a license with terms and conditions, for any of the causes specified in
7 this chapter for suspension or revocation of a license, including, but not
8 limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6,
9 3755, 3757, 3760, and 3761.”

10 8. Section 3752 of the Code states,

11 “A plea or verdict of guilty or a conviction following a plea of nolo
12 contendere made to a charge of any offense which substantially relates to
13 the qualifications, functions, or duties of a respiratory care practitioner is
14 deemed to be a conviction within the meaning of this article. The board
15 shall order the license suspended or revoked, or may decline to issue a
16 license, when the time for appeal has elapsed, or the judgment of
17 conviction has been affirmed on appeal or when an order granting
18 probation is made suspending the imposition of sentence, irrespective of a
19 subsequent order under Section 1203.4 of the Penal Code allowing the
20 person to withdraw his or her plea of guilty and to enter a plea of not guilty,
21 or setting aside the verdict of guilty, or dismissing the accusation,
22 information, or indictment.”

23 9. Section 3754 of the Code states: “The board may deny an
24 application for, or issue with terms and conditions, or suspend or revoke, or impose
25 probationary conditions upon, a license in any decision made after a hearing, as provided
26 in Section 3753.”

27 10. California Code of Regulations, title 16, section 1399.370, states, in
28 pertinent part:

1 “For the purposes of denial, suspension, or revocation of a license, a
2 crime or act shall be considered to be substantially related to the
3 qualifications, functions or duties of a respiratory care practitioner, if it
4 evidences present or potential unfitness of a licensee to perform the
5 functions authorized by his or her license or in a manner inconsistent with
6 the public health, safety, or welfare. Such crimes or acts include but are not
7 limited to those involving the following:

8 (a) Violating or attempting to violate, directly or indirectly, or
9 assisting or abetting the violation of or conspiring to violation any
10 provision or term of the Act.

11 “...”

12 COST RECOVERY

13 12. Section 3753.5, subdivision (a) of the Code states:

14 “In any order issued in resolution of a disciplinary proceeding
15 before the board, the board or the administrative law judge may direct any
16 practitioner or applicant found to have committed a violation or violations
17 of law to pay to the board a sum not to exceed the costs of the investigation
18 and prosecution of the case.”

19 13. Section 3753.7 of the Code states:

20 “For purposes of the Respiratory Care Practice Act, costs of
21 prosecution shall include attorney general or other prosecuting attorney
22 fees, expert witness fees, and other administrative, filing, and service fees.”

23 14 Section 3753.1 of the Code states:

24 “(a) An administrative disciplinary decision imposing terms of
25 probation may include, among other things, a requirement that the
26 licensee-probationer pay the monetary costs associated with monitoring the
27 probation.

28 “...”

1 FIRST CAUSE FOR DENIAL OF LICENSE

2 (Conviction of Crimes Substantially Related to the Qualifications,
3 Functions, or Duties of a Respiratory Care Practitioner)

4 15. Respondent's application is subject to denial under section 3750, as
5 defined by section 3750, subdivision (d), and 3752 of the Code, and Title 16 of the
6 California Code of Regulations, section 1399.370, in that Respondent has been convicted
7 of crimes substantially related to the qualifications, functions, or duties of a Respiratory
8 Care Practitioner, as more particularly described below.

9 (a) On or about December 17, 2004, Respondent was arrested
10 attempting to transport 26.07 pounds of marijuana into the United States from
11 Mexico at the Otay Mesa Port of Entry.

12 (b) On or about December 29, 2004, Respondent was charged, in the
13 case entitled *People of the State of California v. Amani Shakate Mansell*, Superior
14 Court of California, County of San Diego, South County Division, Court Case
15 CS190289, with the possession of marijuana for sale in violation of Health and
16 Safety Code section 11359, a felony; transportation of more than 28.5 grams of
17 marijuana in violation of Health and Safety Code section 11360, subdivision (a), a
18 felony; and, possession of more than 28.5 grams of marijuana in violation of
19 Health and Safety Code section 11357, subdivision (c), a misdemeanor.

20 (c) On or about February 8, 2005, Respondent entered a guilty plea in
21 the case entitled *People of the State of California v. Amani Shakate Mansell*,
22 Superior Court of California, County of San Diego, South County Division, Court
23 Case CS190289, to a violation of Health and Safety Code 11359 [possession of
24 marijuana for sale], a felony, and a violation of Health and Safety Code section
25 11357, subdivision (c) [possession of more than 28.5 grams of marijuana], a
26 misdemeanor.

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1 (d) On or about March 21, 2005, Respondent was sentenced in Case
2 CS190289 to formal probation for a term of thirty-six (36) months, forty (40)
3 hours of public work service, and a fine of five hundred dollars (\$500.00).

4 SECOND CAUSE FOR DENIAL OF LICENSE

5 (Obtained or Possessed any Controlled Substance)

6 16. Respondent's application is subject to denial under section 3750.5,
7 subdivision (a), in that Respondent obtained and possessed a controlled substance in
8 violation of law, as more particularly alleged hereinafter: Paragraph 15, 15a, 15b, 15c, and
9 15d, above, are hereby incorporated by reference and realleged as if fully set forth herein.

10 PRAYER

11 WHEREFORE, Complainant requests that a hearing be held on the matters
12 herein alleged, and that following the hearing, the Board issue a decision:

13 1. Denying the application of Amani Shakhate Mansell for a
14 Respiratory Care Practitioner License;

15 2. Directing Amani Shakhate Mansell to pay the Respiratory Care
16 Board of California the costs of the investigation and enforcement of this case, and if
17 placed on probation, the costs of probation monitoring; and

18 3. Taking such other and further action as deemed necessary and
19 proper.

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21 DATED: November 18, 2008

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23 Original signed by Liane Zimmerman for:
24 STEPHANIE NUNEZ
25 Executive Officer
26 Respiratory Care Board of California
27 State of California
28 Complainant

SD2008800560